

**Summary of IDEM Workgroup Meeting
ANTIDEGRADATION/OSRW**

Friday, August 15, 2003

IDEM, 2525 N. Shadeland Ave, Conference Room C, Indianapolis
9:00a.m. – 2:00p.m. E.S.T.

Introduction:

On Friday, August 15, 2003, IDEM staff met for the eleventh time with a wide cross-section of stakeholders which make up the Antidegradation/OSRW workgroup. These notes are intended to be a summary of the major points from the meeting held at IDEM's Shadeland offices.

The meeting was called to order by Larry Wu.

Workgroup members in attendance for all or part of the meeting included: Art Umble, Bill Beranek, Bowden Quinn, Charlotte Read (by speakerphone), Kent Halloran, Neil Parke, and Ralph Roper.

Other participants included Edward Hammer and Liz Bower from EPA Region 5.

In addition, the following IDEM staff members were present for all or part of the meeting: Dave Kallander, Dennis Clark, and Megan Wallace.

Summary:

The workgroup discussed the following:

1. The workgroup noticed that John Nixon (OLC) was not present and that a person from the permit section was not present. IDEM informed the workgroup that Lonnie Brumfield would be the person attending from the permit section, but was unable to make it to today's meeting. The workgroup, pointing out the importance of the attorney's role and the permit staff's role at these meetings, asked that there be a backup for both of these positions.
2. Four handouts were provided at the meeting in addition to the minutes and agenda. Charlotte Read provided one (1) document that was a memorandum of law and supplemental testimony of the Environmental Law and Policy Center, Friends of the Fox River, Prairie Rivers Network, and Sierra Club for Revisions to Illinois Antidegradation Rules. She received this document from Albert Ettinger. Bill Beranek provided two (2) documents. One was titled "Thoughts on the Antidegradation Implementation Triggers in the 1999 IDEM Proposal" and the other was a categorization of issues from the meeting before. The last handout was provided by IDEM and was also a categorization of issues as developed by the

workgroup at their July 21, 2003 meeting. The workgroup discussed the handouts as follows:

- A. Art Umble asks about the two (2) tables of categorization of issues. Wants to know the difference between them and which one we are using. It is explained that the IDEM table was left exactly how the workgroup had categorized the issues from the prior meeting. Bill had used the workgroup's discussion from the last meeting and made a few changes.
 - B. It was agreed that OSRWs should be listed as a category (2) instead of a category (3). Two (2) asterisks will be added to Bill's chart after the 3 for OSRWs.
 - C. Art asks if categories (2) and (3) will both require a fiscal impact analysis. Larry Wu answers that category (3) will but is not sure about category (2). He thinks the mandate could be strong enough for category (2) to not require a fiscal impact analysis.
 - D. Bill thinks the spirit of the general assembly wants to see a fiscal impact analysis for category (2) because it is a broad range and could have several options of cost.
 - E. Art wants to add a section onto the categorization of issues document that specifies which categories will require a fiscal impact analysis. Denny Clark does not want to include this information on the document because it is not this workgroup's decision as to what will require a fiscal impact analysis.
 - F. The question is raised again about who will be doing the fiscal impact analysis. Larry says that in the past IDEM has put together the information and given it to Legislative Services Agency (LSA). Since HEA 1671, he isn't quite sure how it will be done in the future.
 - G. Bill wants to add draft to both documents on categorization of issues.
 - H. Charlotte says that she and Jane Dustin will put together issues from Ettinger's document.
 - I. Charlotte also says that Albert Ettinger would be willing to come to speak to the workgroup.
 - J. Bill's and Charlotte's documents will be posted on the Triennial website.
3. The minutes from the July 21, 2003 workgroup meeting were approved with one amendment. That amendment was to add IDEM's version of the categorization of issues to the end of the minutes. The minutes will be posted to the website.
4. Charlotte asks Dave Kallander if he has located the fiscal impact documents he had indicated that he would look for at the last meeting. Dave Kallander responded that he had located the Great Lakes Guidance fiscal impact analysis but wasn't able to locate the general EPA guidance document on conducting fiscal impact analyses. He indicated that he would talk to EPA staff and locate the document. Dennis Clark pointed out that the Great Lakes Guidance fiscal impact analysis would be specific to the Great Lakes Guidance and probably not help very much in conducting a fiscal impact analysis on this rulemaking.

5. Second Notice Discussion
- A. Larry asks the workgroup to set a date for Second Notice and says that Tim Method is thinking it should be done sooner than later.
 - B. Charlotte asks if there is any intention of combining all four rulemakings when they go to EPA for approval. Larry says they are separate rulemakings right now and doesn't know if there are any intentions of combining them when they go to EPA. If they do get combined, we would want all four rulemakings moving at the same pace.
 - C. Larry takes a poll on what everyone thinks of December as the Second Notice deadline.
 - 1. Megan Wallace notes that if December is our publish date, then November 10th will be our deadline submittal date to LSA. This would only give us two (2) more scheduled workgroup meetings to get the draft rule in order.
 - 2. Bill doesn't think it is beneficial to put out a Second Notice until we as a workgroup have a good handle on what we want to say. He thinks IDEM will receive the same comments as they did for First Notice.
 - 3. Charlotte thinks that earlier is better than later. She says that Second Notice is just a stake in the ground. It can be removed or pounded in.
 - 4. Art thinks it will take at least another four (4) or five (5) meetings. In that case December does not seem reasonable.
 - 5. Larry poses the question of how thorough does Second Notice have to be.
 - 6. Art says he will not feel comfortable just putting out something. He wants to look through the other states rules and put a good rule together for Indiana and it just can't be done by December.
 - 7. Kent Holloran doesn't think there is a way to get it out by December. There is a lot of work to do.
 - D. Neil Parke says that maybe we can start by working the details out on the 1999 draft. He mentions things like semi colons, ands, etc.
 - E. Ralph Roper wants a structure or framework set forth before details.
 - F. Art asks the question that if we just "massage" the 1999 draft and Second Notice it, are we prepared to answer comments that we receive. Larry adds that we have discussed having two (2) public meetings before Second Notice. If we publish Second Notice earlier, we will have to move the meetings back.
 - G. The group asks Bowden Quinn what he thinks as a board member. Bowden says that it would be nice to have people come before the Water Pollution Control Board and say that they have worked long and hard on a rule and this is what has been decided. He doesn't think it will happen that way because these same issues have been under discussion for years. He says that if IDEM wants to move forward with the 1999 draft, then they should.
 - H. Ralph asks if Second Notice can include a framework. Art suggests renoting First Notice with a framework.
 - I. Bill says that the only reason to have a workgroup is to add value to a rule. Bill thinks that to date, this workgroup isn't adding value. He thinks maybe we don't need this workgroup, maybe we need a different workgroup.

- J. Larry thinks that the workgroup does add value. Some people thought that SEA 431 was going to be a magic wand and fix everything. This workgroup has shown how difficult these issues still are by raising many different issues and viewpoints.
 - K. Bill suggests having the workgroup lay out issues and maybe having Second Notice list out a number of options. Larry isn't sure if it is legal to right a Second Notice in that manner. Bill adds that if it isn't legal, we could at least send it out for wide public comment and have a meeting on the different options.
 - L. Dave suggests having IDEM clean up the 1999 draft. IDEM could take things out that they know the workgroup doesn't want such as Outstanding Historical State Resource Waters (OHSRWs) and add some things that the workgroup has said.
 - M. Denny says that IDEM will include the framework in whatever they come up with. Bill says that not everyone agreed on a certain framework.
 - N. Charlotte asks if looking at biology in the water will be included. She thinks IDEM needs to do a biological assessment of the water.
 - O. Denny says that if we can agree that there is a middle ground, then we can focus on that; if not, let IDEM write a rule and fight it out at the Board.
 - P. Larry summarizes the group's discussion by saying that the workgroup agreed to let Dave Kallander and other staff put together a draft of the rule including the framework and SEA 431. Bowden says not to include framework because it was not agreed on.
 - Q. The group wants the differences that are added or taken out of the 1999 draft to be clearly identified in the draft.
 - R. Larry suggests canceling the next meeting to allow staff to work on the draft rule. The goal will be for staff to produce a draft by mid-September. This would allow two weeks for the workgroup to comment. Ideally, IDEM will have time to produce a revised draft in time for the October meeting. After some discussion, it was agreed that the draft would be distributed as a hard copy. This would avoid problems of file conversion and allow everyone to literally be on the same page.
 - S. The group will try and have Second Notice ready for January 1, 2004.
6. The next meeting is scheduled for Monday, October 20, 2003 from 9:00a.m. – 2:00p.m. E.S.T. While it was not discussed, the meeting will be held at IGCN, 12th floor, Conference Room D. This is in keeping with the decision of the workgroup to move the meetings back to Shadeland during the period of the Hyperfix construction.